

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 3:21-mj-521
)	3:22-cr-005
Nicholas Derosier,)	
)	
Defendant.)	

TRANSCRIPT OF DIGITAL RECORDING OF
DETENTION HEARING

Taken at
United States Courthouse
Fargo, North Dakota
January 4 and 6, 2022

BEFORE THE HONORABLE ALICE R. SENECHAL
-- UNITED STATES DISTRICT COURT MAGISTRATE JUDGE --

APPEARANCES

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FOR THE UNITED STATES

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FOR THE DEFENDANT

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1 THE COURT: Yes.

2 MS. PUHL: Yes, I have reviewed this report, and I've
3 had time to consider it. Thank you.

4 THE COURT: Mr. Bellmore?

5 MR. BELLMORE: Yes, I have.

6 THE COURT: Okay. Ms. Puhl, you may proceed.

7 MS. PUHL: Thank you. May I remain seated, Your
8 Honor?

9 THE COURT: Yes, and please pull the microphone
10 closer so --

11 MS. PUHL: Certainly.

12 THE COURT: -- it picks it up.

13 MS. PUHL: Your Honor, the United States is
14 requesting detention in this matter. The defendant,
15 Mr. Derosier, is a prolific collector and distributor of child
16 pornography and a longtime hands-on offender of young boys.

17 Because this case involves minor victims, there is a
18 presumption of detention; that is, there is a presumption that
19 there are no conditions that will reasonably assure the
20 defendant's appearance as required or assure the safety of the
21 community in this case, so this is a over -- a presumption that
22 the defendant must overcome, and I would submit he simply
23 cannot do so in this case based upon the history and
24 circumstances of this defendant, the weight of the evidence and
25 his criminal history.

1 First, I want to address the defendant's living
2 situation. He submits in the pretrial services report that he
3 owns a condo with his partner, Riley Berg, who is now, I'm
4 told, just turned 21 years of age. That condo is not owned by
5 the defendant. In fact, the -- it would appear that the condo
6 is, in fact, owned by an individual named Michael Biel.

7 Michael Biel is a 66-year-old man who owns a NAPA
8 Auto Parts store in Carrington, North Dakota, among other NAPA
9 Auto Parts stores throughout the Midwest, including one in
10 Thief River Falls.

11 Mr. Biel met the defendant ten years ago online,
12 after which he hired the defendant to work for him at the Thief
13 River Falls NAPA Auto Parts store. Thereafter the defendant
14 was charged and convicted of stealing from that NAPA Auto Parts
15 store, and that's reflected on page 4 of the pretrial services
16 report, so the -- that NAPA store -- NAPA Auto Parts store in
17 particular, Mr. Biel is the victim of that offense.

18 This is the condo that the defendant is residing in.
19 It is owned by Mr. Biel, so when I saw this, I asked the agents
20 to reach out to Mr. Biel today to find out about ownership of
21 this condo. And Mr. Biel tells law enforcement that it --
22 there was a contract for deed and that Mr. Derosier has made
23 one payment, and that payment was in September of this year.
24 He has made no other payments, and he is taking legal action to
25 get that condo returned to him, Your Honor.

1 I also learned today that the condo association has
2 put a \$15,000 lien on this condo because Mr. Derosier has not
3 paid condo dues, has not paid special assessment, and did not
4 undergo a background check, which apparently is required by the
5 condo association, so that calls into question whether, in
6 fact, this condo is available for him to return to.

7 Also important about Mr. Biel is that Mr. Biel bonded
8 the defendant out of state custody after he was charged in
9 Grand Forks County with the child pornography offenses.
10 Because this was obviously very strange to us - he's a victim
11 of the offense in 2012, 2015, and then later bonds him out -
12 law enforcement interviewed him. Quite perplexing. Doesn't
13 say much at that point. Says that he has a soft place in his
14 heart for Mr. Derosier.

15 As we later learned, as I just -- as set forth in the
16 presentence investigation report (sic), the investigation
17 revealed that he -- Mr. Derosier then moves into this condo
18 that's owned by Mr. Biel. And law enforcement executed a
19 search warrant at that condo on October 31, 2021, and this was
20 one of many search warrants that have been executed in this
21 case.

22 They interview Mr. Biel for a second time, and he
23 admits to being in a relationship with the defendant at that
24 point or having a relationship. And he also shares text
25 conversations between Mister -- Mr. Derosier and himself,

1 during which time Mr. Derosier is sending him naked pictures of
2 his current partner, who I believe at the time was either 19 or
3 20 years of age.

4 In addition, the defendant had text message
5 conversations with a 77-year-old man from Grand Forks on
6 August 23, 2021, after his bond was revoked in state court. So
7 his bond is revoked in state court, and he's detained for a
8 short period of time, and he has text messages with this
9 77-year-old man from Grand Forks.

10 And during those text conversations the man is asking
11 or telling the defendant, Mr. Derosier, that he wants him to
12 bring Riley over to his house to give him a massage. So this
13 defendant, Your Honor, continues, I believe, I would submit, to
14 exploit individuals, in particular this young man, Mr. Riley.

15 Now, he does not consider himself a victim, no
16 question, but I think what we're seeing, of course, is
17 exploitation. At the time of the defendant's arrest, law
18 enforcement asked Mr. Riley whether he was aware that the
19 defendant was serving him up to a seven -- or a 77-year-old
20 man, and Mr. Riley said no, Your Honor.

21 THE COURT: Mr. Berg?

22 MS. PUHL: Mr. Berg. I'm sorry. Yes. Thank you.

23 So I mention all of that again for two reasons,
24 because I'm -- it calls into question this place that the
25 defendant has identified that he can return to. I would submit

1 at best it's questionable. And, of course, his relationship
2 with Mr. Riley is, of course, I think of concern here.

3 In addition, Your Honor -- and I'm going to be
4 relying on the affidavit that supports the Complaint. The
5 United States -- well, before I get to that, let me also talk
6 about the defendant's criminal history that's reflected on page
7 3. The defendant has a 2006 charge for criminal sexual conduct
8 in the second degree out of Anoka County. The victim of that
9 offense is a family member of the defendant.

10 The -- there's another family member, the defendant's
11 sister, who is claiming or who has alleged that the defendant
12 sexually abused her when she was in elementary school and
13 middle school. And she tells us that this victim of this
14 offense recanted because there was pressure put on them by the
15 family, and there was -- or not pressure, perhaps, but there
16 was a promise made to these young girls that the defendant
17 would buy them a car, and, in fact, the victim recanted.

18 But today the victim, who's in court, and she told me
19 that I can -- can refer to her as the defendant's sister, is
20 claiming that she was sexually abused by this defendant when
21 she was in elementary school and middle school.

22 Now, relative to the facts of this case, the weight
23 of the evidence is very strong. There's child -- thousands of
24 images and videos of child pornography depicting mostly boys
25 that were recovered from numerous devices from the defendant's

1 residence in Grand Forks, including on his person and in a safe
2 that was located in his bedroom.

3 Now, relative to the phone, there's an HTC cell phone
4 that was recovered from the safe that was found in his bedroom
5 in his Grand Forks residence. Special Agent Smith has
6 conducted a forensic examination of that phone, and there's
7 child pornography. And I'm not going to talk about that child
8 pornography because it's detailed, I think, in the affidavit
9 that supports the Complaint, the numbers and then some of the
10 images.

11 But in addition to the child pornography, on an HTC
12 cell phone, law enforcement recovered -- or excuse me. Special
13 Agent Smith identified 20 to 21 victims, individuals that
14 he's -- that are suspected victims of this defendant,
15 individuals that this defendant has engaged in sexual activity
16 with when these victims were underage, and this goes back to
17 2011.

18 As I sit here right now, I can't recall if four -- I
19 think five of those victims have since been interviewed. It's
20 taking time because, of course, they don't have the same phone
21 numbers, it's -- they've since moved, they're now adults, but
22 five of those victims have been recently interviewed in the
23 last six to nine months by HSI agents.

24 Those victims -- with the exception of one, those
25 victims have -- have revealed that they sent -- either sent

1 sexually graphic images to the defendant, or at least three of
2 them told law enforcement that the defendant engaged in sexual
3 activity with them when they were underage. And again, we have
4 a lot of work to be done here, but as I said, Special Agent
5 Smith has identified 20 to 21 victims just from this phone
6 alone, Your Honor.

7 There are also conversations that were recovered from
8 this HT (sic) cell phone between the defendant and James
9 McHaney. As is detailed in some of the search warrant
10 affidavits, James McHaney is an individual that was convicted
11 of child pornography offenses out of the District of Columbia.

12 After he was released from BOP custody, he moves to
13 Minnesota, moves to the metro area, and his supervision is
14 transferred, and again, this is detailed in search warrant
15 affidavits. That supervision is revoked recently. It's
16 revoked -- was revoked twice, most recently in June. I think
17 it was June of this summer. And he cooperates as a part of
18 that. And he sits down with the Minnesota Internet Crimes
19 Against Children Task Force, and he tells them a whole lot of
20 information about a whole lot of people.

21 Now, again, this is independent of our investigation,
22 what's happening in North Dakota, but it gets forwarded to the
23 North Dakota ICAC Task Force because there's information in
24 that report which implicates Mr. Derosier. And it's consistent
25 with what one of the victims who has been interviewed told law

1 enforcement, that he had sex with the defendant when he was a
2 minor and he had sex with Mr. McHaney. Mr. McHaney introduced
3 the defendant to this minor.

4 Mr. McHaney -- Mr. McHaney is interviewed recently by
5 HSI, and what does he say? He says that they met roughly ten
6 years ago, and he says that he engaged in sexual activity with
7 underage males with Mr. Derosier on several occasions.

8 And he says that Mr. Derosier told him at a
9 restaurant in Minneapolis -- he's very specific about which
10 restaurant, Sabo's (ph) in downtown Minneapolis. He told him
11 that he was having sex with his nephew, one of his nephews, and
12 that he was recording it, so that came from Mr. McHaney.

13 And again, this is Mr. McHaney. The first report was
14 independent of our investigation, and law enforcement goes down
15 and interviews him, and it's consistent with what the forensics
16 are showing, that he's having conversations with young -- about
17 young males with Mr. McHaney.

18 And, of course, the one victim who has been
19 interviewed -- one of the five victims who has been interviewed
20 said, "Yes, I had sex with Mr. Derosier when I was underage,
21 and Mr. McHaney, that they sexually assaulted me." And again,
22 that's from one phone.

23 Multiple other devices that were recovered from --
24 from this defendant. Most recently law enforcement gained
25 access to the cell phone that was recovered from the

1 defendant's person. The search warrant was executed in
2 september of 2020. The search warrant (sic) that was recovered
3 from his person was not -- law enforcement was not able to gain
4 access to it, and they sent it off to Cellebrite. Cellebrite,
5 after over a year, gained access to it, provided it to law
6 enforcement.

7 And Special Agent Smith has begun to go through that
8 lengthy process. It's about a -- I think about probably a
9 50-page report, just a summary report of that one device. And
10 some of the conversations that the defendant is having with
11 other like-minded individuals, individuals that are sexually
12 interested in prepubescent-aged boys, are detailed in the
13 affidavit that supports the Complaint, and he is claiming that
14 he is sexually assaulting his two prepubescent-aged nephews.

15 We also know that he is sending pictures of his
16 nephews, sexually-suggestive pictures and seemingly innocent
17 pictures of his nephews. And in some cases he's getting child
18 pornography in exchange as a result of sending those pictures,
19 Your Honor. And, again, some of those conversations -- I think
20 two, perhaps three of those conversations, very short snippets
21 of them are detailed in the affidavit, but it is -- it is a
22 very small portion of what's at issue here, Your Honor.

23 There are all kinds of other conversations that the
24 defendant is having with like-minded individuals where he's
25 representing that the defendant -- or that he is engaged --

1 that he is sexually abusing these nephews. Sometimes he
2 represents that he's the father of these children, but if
3 there's -- but to not be mistaken, he's sending pictures of the
4 nephews, so we know it's the nephew and not some other child.
5 And in other cases he's representing that he is the uncle, and
6 he's very specific about what kinds of sexual activity that
7 he's engaging in with these kids.

8 Also of import here, Your Honor, is the fact that
9 we -- the law enforcement here in North Dakota received yet
10 another tip from law enforcement in Minnesota. That was
11 independent of the investigation happening here, and that too
12 is detailed in, I think, every search warrant affidavit that's
13 been presented to this Court in this case.

14 And at issue in that case was a man, Jonathan -- or,
15 excuse me, a man who reported to the Eagan Police Department
16 that he met an individual online who was later identified as
17 Justin Langen, who has since been charged with child
18 pornography offenses in state court in Minnesota. He said he
19 met this individual and that he -- that this individual sent
20 him child pornography. So he receives this child pornography
21 that's very disturbing. He walks into the Eagan Police
22 Department and hands it over.

23 And again, this is -- again, I'm going to say this
24 again, it's set forth in the search warrant affidavits. This
25 then led to a search warrant of Mr. Langen's residence, and

1 they seized media, including a telephone. The forensic
2 examination of that telephone revealed text conversations and
3 Grindr conversations between Mr. Derosier and Justin Langen.
4 Now, they weren't able to recover child pornography, but you
5 can infer that child pornography was traded based upon what is
6 being said in these conversations.

7 And he also provided him a picture of Mr. Derosier
8 and his younger nephew, and they talk about having boy fun
9 together. He talks -- they're talking about sexual -- they're
10 talking about sexual interest in prepubescent-age boys, and he
11 sends an image of he and his younger nephew, who he represents
12 is five years of age. It's the younger of the two nephews.
13 His sister has two boys. This is the younger of the two
14 nephews. So again, that's independent of what's going on in
15 North Dakota. And again, that -- that image of the defendant
16 and the defendant's nephew shows up on Mr. Langen's cell phone
17 in Minnesota, Your Honor.

18 And, of course, as I said, again, there's all that
19 other media which reveals all the other child pornography. In
20 total there -- I think there are five cyber tips in this case,
21 Your Honor, that were ultimately resolved back to the
22 defendant. Some of these cyber tips were, I think, as -- date
23 back many years, but Special Agent Smith has been -- has since
24 been able to attribute them to this defendant.

25 what's of interest in this case, Your Honor, I think

1 one of the first cyber tips that came to North Dakota I believe
2 was in January or February of 2019, and it was shortly after
3 the defendant's business partner was killed. And he said that
4 the cyber tip came back to Team Lawn, and he made a
5 representation to the Grand Forks Police Department or law
6 enforcement that his devices had been stolen. Devices had been
7 stolen, and, unfortunately, it was dropped at that point, so it
8 was never -- law enforcement never sought through.

9 Fast-forward many months, there's a search warrant at
10 the defendant's residence for the -- for his engaging in
11 fraudulent activities relative to his Team Lawn business, and
12 it was during that search warrant in September of 2020 that
13 they located child pornography, Your Honor. But what's of
14 interest is the devices weren't stolen. All of those devices
15 were there. He lied to law enforcement then. He continues to
16 lie to law enforcement and continues, I think, to misrepresent
17 to this Court what's going on with his living situation.

18 In the end, Your Honor, the defendant poses a very
19 real, a very serious and a very imminent threat to the safety
20 of the community, in particular children. And again, some of
21 this activity or the activity I believe -- the activity
22 relative to Riley Berg is all happening after he's been charged
23 in Grand Forks County, Your Honor.

24 And I'm asking this Court to rely on the affidavit
25 that supports the Complaint, the affidavit -- the search

1 warrant affidavits, as well as the information that I have
2 proffered about the many suspected victims that were recovered
3 from the HTC cell phone, some of which have been -- some of
4 those victims have been interviewed by law enforcement, so
5 again, a serial offender of children.

6 So given the weight of the evidence and, I would
7 submit, the somewhat weak ties to this community, I also would
8 submit that the defendant poses a risk of flight in this case.
9 As I said, he's got that history of dishonesty, whether it be
10 his theft conviction, his deceiving others relative to his Team
11 Lawn business, and then again, those representations made to
12 this Court. In light of this -- all of this, Your Honor, the
13 United States submits that the defendant simply cannot overcome
14 the presumption of detention here.

15 THE COURT: You made several references to affidavits
16 supporting search warrant applications.

17 MS. PUHL: Yep.

18 THE COURT: Have those been provided to Mr. Bellmore?

19 MS. PUHL: They have not, no. I can certainly
20 provide them. I have them all right here, but they will be
21 provided to him after he's indicted, along with the other
22 evidence.

23 THE COURT: Mr. Bellmore.

24 MR. BELLMORE: Yes, Your Honor. I don't know when
25 that -- I don't know when that's going to be, and that's the

1 problem here. The government unloads all of these allegations,
2 all of these accusations for information mostly that is not
3 charged in the Complaint, involving conduct that's taken place
4 out of district, which I am -- I do not have to review in
5 preparation of this hearing, was not given a heads-up about it,
6 that there's -- that adds specific information was going to be
7 provided at the hearing.

8 And I don't have any of that information through
9 discovery because the government has charged this through
10 Complaint, and they're not going to provide discovery until
11 he's indicted. And when's he going to be indicted? There's no
12 timeline on that. It's whenever the government wants to do it,
13 I suppose. And so what the government has essentially done
14 here is, seeing the end of the state case, filed a Complaint
15 and affidavit based on a partial version of their
16 investigation, to use it to have Mr. Derosier arrested.

17 I have gone through -- this case was -- the state
18 version of this case was charged out quite a while ago. It was
19 dismissed recently, on December 30th. I had taken a look at
20 the docket in that case, and it looked like the State of North
21 Dakota was playing tricks on Mr. Derosier's bond. He was
22 bonded out. He posted a \$25,000 bond, and there was no
23 substantive issues with him while he was released.

24 For example, I noticed that the government had
25 indicated that if Mr. Derosier appeared for his videoconference

1 hearing which took place over the internet, that they were
2 going to move to revoke his bond because he would've had to
3 access the internet, knowing that the Court had scheduled the
4 hearing for a video teleconference. Fortunately, that didn't
5 happen.

6 But Mr. Derosier has been out. He has been bonded in
7 this -- in that case and had been doing what he needs to do.
8 He wasn't -- there wasn't any legitimate revocation. He was
9 arrested at his home on the warrant in this case. Officers
10 knew where to -- found him. He was where he was supposed to
11 be, which is the residence that we are asking for his release
12 to, the condo that the government mentioned, so he has a solid
13 release plan.

14 I guess going back to the presumption here, of
15 course, the Court knows the presumption is rebuttable. We bear
16 the burden of producing a release plan, and this is a
17 rock-solid release plan. Mr. Derosier has a place where he can
18 go. He has a roommate, his significant other, his partner,
19 Mr. Berg, who pretrial services has contacted, has verified all
20 of the information.

21 The government indicates that Mr. Derosier was
22 playing a fast one with the status of this condo. He was not.
23 I was present for the bond interview. He said it was a
24 contract for deed. That is actually described in the financial
25 section of the Bond Report, so he wasn't trying to mislead. He

1 wasn't misleading pretrial services. That is a place that he
2 has.

3 whether he's behind on payments is one thing, but
4 he's certainly not misrepresenting that he has a place. And
5 that place, Your Honor, is not too far away from the
6 courthouse. It's not too far away from where his pretrial
7 services officer would be, within walking distance, and
8 Mr. Derosier does not drive.

9 what I'm proposing, Your Honor, is his release on
10 conditions that he be supervised, that he be supervised with
11 the condition that he undergo location monitoring and that he
12 be confined to his home, home confinement conditions. Those
13 are conditions of release that I believe we have -- that we are
14 producing through the Bond Report and through my comments this
15 afternoon that overcome that burden.

16 Again, I don't have the burden of persuasion in this
17 case with respect to his release. That's the government. I
18 have a limited burden of producing conditions that would
19 overcome the presumption that there are no options available.
20 There are options available. He has a place to go. He has a
21 condominium. There are conditions on -- restrictions that can
22 be placed upon him by the Court that would alleviate concerns
23 of nonappearance and danger -- danger to the community.

24 The Bond Report indicates that there's criminal
25 history entries, relatively few convictions. The government

1 mentioned the Thief River Falls theft case that was ten days
2 jail that was stayed for one year.

3 There are failure to appear entries in those cases.
4 Starting with the ones that are upfront in bold on page 3, both
5 of those are out of Minnesota, one in Stevens County for a
6 driving case, one in Sterns County for a fraudulent check case,
7 a bad check case. Those cases were opened in 2020.
8 Mr. Derosier traveled to Minnesota to attend those proceedings,
9 go to the courthouse to address those. He was told that the
10 courthouse was shut down because of COVID and to pay attention,
11 there'd be a new date.

12 It's unclear to me whether or not he was mailed the
13 new date, whether it was mailed to the wrong address. Early on
14 Mr. Derosier had been checking to see what the status of that
15 was, and after several months kind of took his eye off of it.
16 And these dates were set and -- and missed.

17 At that point he was dealing with the North Dakota
18 cases, where he had a bond condition where he could not leave
19 the state of North Dakota, so he couldn't easily get to
20 Minnesota to take care of those and to deal with those, because
21 those appear to be active, Your Honor.

22 I would have -- request an additional condition of
23 release that he resolve those within a reasonable time, such as
24 45 days, and if he were to be released, that he resolve those
25 warrants within 45 days. Those are -- again, taking a look at

1 the nature of those charges, appear to be not -- not serious
2 and should be easily resolved if he's given the opportunity on
3 release.

4 Your Honor, going -- going to the Complaint, a lot of
5 the -- the charges that are actually -- were brought forth in
6 the Complaint, only one of them carries a mandatory minimum
7 case -- sentence - excuse me - of five years. The nature of
8 the offenses as charged are not overly serious.

9 The affidavit that provides some information around
10 them is -- is another thing, Your Honor. I would just point
11 that some of the information that's provided in there is
12 unclear. It's not with certainty that Mr. Derosier is the one
13 who is engaging in these communications.

14 And, two, the government's concern about nephews -
15 I'm basing this on the affidavit because this is, frankly, the
16 only substantive information on the government's evidence I
17 have at this point - indicates that neither -- neither of those
18 boys disclosed any sexual abuse when they were forensically
19 interviewed, interviewed by a professional trained to interview
20 children, and that there was no information disclosed.

21 So, Your Honor, I even -- even with the allegations
22 of contraband being found on electronic devices, I still
23 believe that there are conditions. Again, it was a condition
24 on the state bond that he was able to abide by, was that he not
25 have a smartphone, that it have easy access to the internet.

1 It wouldn't be necessary.

2 The Bond Report indicates that Mr. Berg, as most
3 people -- almost every -- every person in free society has a
4 laptop, a phone or some access to the internet that -- for
5 daily life, but that would be separate from Mr. Derosier. He
6 would not have access to that.

7 And again, Mr. Berg has agreed to serve as a
8 third-party custodian. I have been in contact with him as
9 well, and he verified the same, understood what was going on,
10 understood that -- there was a willingness to report any issues
11 of noncompliance, made that understanding -- made it -- made it
12 clear that he understood what was going on. And I would say
13 that I'm unaware of any concern that he had regarding what the
14 government suspects is some issue with that -- with that
15 relationship. He seemed willing to help and willing to
16 understand what would -- the expectations would be.

17 What's not in the Bond Report is that we, during the
18 interview, invited pretrial services to contact a state
19 probation officer. We provided a name, indicated this officer
20 was stationed out of Fargo who had information based on his
21 supervision of Mr. Derosier and to see, you know, what
22 Mr. Derosier had been doing, had he been compliant. I would
23 say he has been.

24 And it doesn't appear as though pretrial services has
25 even attempted to contact this officer. I believe it's Officer

1 Lund in Fargo who would have very important and relevant
2 information as to whether or not Mr. Derosier is supervisable.
3 I believe that he is amenable to supervision. And again, we
4 are proposing -- we have proposed to pretrial services that it
5 be home confinement.

6 And again, the Bond Report indicates that one strike
7 against release is that he has no verifiable employment, which
8 at this time I'm not going to dispute. At the same time, if
9 he's subject to home confinement condition, there's not that
10 additional concern about the individual being out at work, not
11 being at home for a certain amount of time, that he is going to
12 be at home, confined there nearly around the clock. Unless
13 there's some legal probation or medical appointment, he would
14 be confined to -- to his home.

15 And again, the proximity to the courthouse, proximity
16 to pretrial services office show that there are alternatives to
17 incarceration in this case.

18 This is -- again, the allegations that are out there
19 I -- I feel as though it puts us at a significant disadvantage
20 being unaware of those. As the government was making their
21 argument, I had looked at the docket. I didn't see that there
22 were any filed affidavits beyond what's in the Complaint in
23 this case. So not only I have not been given those, I don't
24 know if I could've found them independently on my own.

25 And so when the Court considers the weight of the

1 evidence, I'd ask the Court to consider the fact that the
2 defense in this case hasn't provided any information to
3 discuss, to review what the government has proffered today.
4 That's a factor the Court has to consider, but would just ask
5 the weight of the evidence and the weight to apply that factor
6 I think should be limited under these circumstances and
7 confined primarily to what's contained in the affidavit. That
8 does allege some serious conduct, Your Honor, but it's not
9 conduct so serious that he's -- he's a danger to the community.

10 These allegations, again, not only took place out of
11 the district, but timeline of them does not appear to be
12 recent. The allegations, even the conversations that were
13 depicted in the affidavit are over two years old, and the state
14 case has been going on for quite some time. Typically when
15 somebody, in my experience, has been arrested and charged in
16 federal court by a Complaint, there was some immediate conduct
17 that was alleged to have occurred. This is -- this is not the
18 case. The information confined to the Complaint is quite old.
19 Both -- both -- all three charges - excuse me - were alleged to
20 have occurred in 2020.

21 And so, you know, with that, Your Honor, I believe
22 that, again, there are -- there are conditions, that any
23 presumption has been overcome by the release plan, that he be
24 placed on home confinement at his residence under the
25 supervision of pretrial services, as well as a third-party

1 custodian in Mr. Berg, and that those conditions alleviate any
2 concerns addressed in the Bond Report regarding risk of
3 nonappearance and risk of flight.

4 I'd just add too, as far as the failure to appears
5 are concerned, most of those didn't result in an arrest. Most
6 of those resulted in learning that there's a warrant and taking
7 care of it. A lot of those failure to appear entries come with
8 a subsequent entry that says warrant quashed.

9 He takes the cases seriously, but he's also -- these
10 are cases where he's out on bond and he's appearing by summons
11 and receiving legal documents in the mail, and so he could've
12 been better about staying on top of court hearings, but it's
13 not as though he was absconding. I believe that there's a
14 difference in these cases, missing court versus absconding.

15 In federal court this case is by far, if you take a
16 look at his record, the most serious case that he's going to
17 have to confront, whatever form that takes, whenever he's
18 indicted. We expect that this would be by and far the most
19 serious case that he will be confronting, and the case --
20 excuse me. The court hearings and the proceedings would be
21 limited in federal court as opposed to just check-ins regularly
22 in state court, and so I don't believe that the failure to
23 appears truly reflect his risk of nonappearance.

24 And again, his -- his time that he's been supervised
25 in the state show that he -- he is amenable to supervision.

1 The facts and circumstances leading to his arrest, where he was
2 found at his home, also indicate that he is not a risk of
3 flight, that he's -- this was -- law enforcement knew where he
4 was. Pretrial services are going to -- is going to know where
5 he is, and then based on that, Your Honor, we're asking for his
6 release under the conditions as I have proposed this afternoon.

7 THE COURT: Mr. Bellmore, the only information that
8 you have received is the Complaint and affidavit, is that
9 correct?

10 MR. BELLMORE: Yes. That's Document 1-1.

11 THE COURT: Okay. Ms. Puhl, I do have some concern
12 about proffering evidence that's not available to the defense.

13 MS. PUHL: I'm -- as I said, Your Honor, the search
14 warrant affidavits are available right now if he wants to
15 review them, and I'm certainly willing to provide those for
16 that purpose.

17 But I do want to address a couple of things that --
18 that has been said, and first, I take issue with the fact that
19 this isn't a serious crime. I think there are few cases, few
20 charges that are more serious. This involves the graphic
21 sexual abuse of prepubescent-aged boys. There's not one,
22 there's not two, there's not a hundred, there's thousands of
23 young boys who are sexually abused. And each one of those
24 videos, each one of those images represents a separate and
25 distinct victim that is being sexually abused, and this

1 defendant is distributing them to individuals who also have a
2 sexual interest in children.

3 Now, in order to get those images, he's also provided
4 images of his two nephews, Your Honor, in exchange for some of
5 the child pornography.

6 Now, defendant says that much of what we have in here
7 is old. A couple things that the defendant is not keeping in
8 mind is that the search warrant was executed in September
9 of 2020. That's when the phone was recovered. Now I'm
10 referring specifically to the phone that was seized from his
11 person. We didn't get access to that phone until October of
12 2021. That's two-and-a-half months ago. That information, I
13 suspect, wasn't available to Grand Forks. That's -- the phone
14 -- that phone is where much of this information comes.

15 And he's having conversations in 2020, up until the
16 point that phone is taken from him, and he's -- in those
17 conversations he's trading images of his nephew with other
18 like-minded individuals, trading child pornography, Your Honor.

19 So, yes, some of this is old -- older, but I think
20 when you -- when you take -- when you look at it in the context
21 of what's going on, when law enforcement gained access to that
22 particular cell phone, it makes sense, Your Honor.

23 Also, we selected conversations in -- or the officer
24 -- the agent selected conversations with other individuals that
25 predated the travel of his two nephews from Minneapolis to

1 North Dakota, because those conversations, he's -- he's
2 representing that he's engaging in sexual activity with these
3 nephews, so they become important because it -- it reveals what
4 his intent is when he picks them up.

5 According to his mother, picks them up without her
6 permission and brings them over to North Dakota and takes
7 pictures of them, sexually suggestive pictures of them, so
8 those conversations were selected because it reflects what his
9 mindset is when he's picking up those children and bringing
10 them to North Dakota.

11 But, again, there are other conversations that
12 continue into 2020, near the point in time of when the
13 telephone -- rather, the cell phone was seized from the
14 defendant.

15 His being a hands-on offender, that's information
16 that's not -- that's not -- that is the only information that
17 I'm proffering that's not set forth in any sort of affidavit, I
18 believe, and that comes from, as I say, the HTC cell phone.

19 This alternative release option is a dangerous
20 alternative because much of what the defendant did, he can do
21 in his own home. He's sitting on his telephone or behind his
22 many devices, reaching out to children, adolescent-age
23 children, trading child pornography with other like-minded
24 individuals, Your Honor. All of that's happening in his home
25 and, therefore, I think it would be a dangerous alternative,

1 and I don't think anything he has submitted overcomes, again,
2 that presumption of detention, Your Honor.

3 THE COURT: Thank you.

4 MR. BELLMORE: Your Honor, can I make one comment?

5 THE COURT: Let me say first, Mr. Bellmore, I'm
6 inclined to continue the hearing to allow you to review the
7 search warrant affidavit and continue it to another day if
8 that's what you choose. But if you want to go ahead and tell
9 me what you want to tell me now, go ahead, Mr. Bellmore.

10 MR. BELLMORE: Well, just -- just to clarify, Your
11 Honor, what is charged in here is serious, but compared to what
12 the government was proffering, there's a difference, hands-on
13 sexual abuse. And certainly I wouldn't disagree that child
14 pornography depicts abuse. At the same time is -- the media
15 files does not mean the possessor or the distributor or even
16 the receiver is the one who abused the child, as depicted in
17 the -- in the image, and there -- and I -- there's a
18 distinction there.

19 So these are serious, but compared to, again, what
20 the statutory penalty ranges are, I -- I wanted to characterize
21 that as being minor as compared to what the government --
22 conduct the government was -- was proffering.

23 But if I have one moment, Your Honor?

24 THE COURT: Sure.

25 MR. BELLMORE: Your Honor, if -- yeah, I would agree

1 that and ask that we continue this proceeding so that I might
2 be able to review more information, review that with
3 Mr. Derosier before the Court makes a decision.

4 THE COURT: And how long a continuance would you
5 request, Mr. Bellmore?

6 MR. BELLMORE: I think by the end of the week, Your
7 Honor, would be enough time if I'm given the affidavits soon.
8 I'm generally available this week.

9 THE COURT: Okay. I think I would have time later
10 Thursday afternoon or later Friday afternoon. And by "later,"
11 I'm thinking 3 o'clock or later on both days. Ms. Puhl?

12 MS. PUHL: I may be out of town Friday, so my
13 preference would be Thursday, Your Honor.

14 MR. BELLMORE: I think that would be my preference
15 too, Your Honor.

16 THE COURT: Okay. Let's plan for a continuance of
17 the hearing. To be safe, I'll say 3:30 on Thursday,
18 January 6th. And in the meantime, Ms. Puhl, you will
19 provide --

20 MS. PUHL: Yep.

21 THE COURT: -- the search warrant affidavits to
22 Mr. Bellmore.

23 MS. PUHL: Yes.

24 THE COURT: So, Mr. Derosier, I'm not going to decide
25 the detention question today. We'll plan to have another

1 hearing after your attorney has a chance to look at those
2 search warrant affidavits. And then we'll be back here, and
3 I'll make a decision at that time.

4 THE DEFENDANT: Okay.

5 THE COURT: Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Ms. Puhl, anything else
8 today?

9 MS. PUHL: Nothing further, Your Honor.

10 THE COURT: Mr. Bellmore, anything else today?

11 MR. BELLMORE: Nothing further, Your Honor.

12 THE COURT: Thank you, all. We're adjourned.

13 (A recess was taken from 3:43 p.m., Tuesday,
14 January 4, 2022, to 3:30 p.m., Thursday, January 6, 2022.)

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(The above-entitled matter came before the Court, The Honorable Alice R. Senechal, United States District Court Magistrate Judge, presiding, commencing at 3:30 p.m., Thursday, January 6, 2022, in the United States Courthouse, Fargo, North Dakota. The following proceedings were had and made of record by digital recording in open court with the defendant present.)

7

8 THE COURT: Today is January 6, 2022. It is
9 3:30 p.m. This is a hearing in Case Number 3:21-mj-521, *United*
10 *States of America versus Nicholas Morgan-Derosier*. Jennifer
11 Puhl is here representing the United States. Mr. Derosier is
12 present and represented by Chris Bellmore from the Federal
13 Public Defender's Office. Meghan Nelson from the pretrial
14 services is also here in the courtroom.

15 And we do have a couple of people who are present
16 telephonically. I granted that request. I just mention that,
17 and I will say to the two of you, if you have any difficulty
18 hearing at any point, please let us know so that we can attempt
19 to remedy that.

20 This is a continuation of a detention hearing. I
21 continued it to allow the defense some time to review search
22 warrant affidavits to which the United States had referred in
23 its proffer of evidence, and the United States has provided
24 those to me at my request as well.

25 So I think, Mr. Bellmore, I will allow you to go

1 first this afternoon, and we can go from there.

2 MR. BELLMORE: Okay. Thank you, Your Honor. I would
3 incorporate the arguments that I'd made at the initial
4 detention -- detention hearing into my arguments this
5 afternoon. I thank the Court for allowing us the opportunity
6 to pause the proceeding to review the search warrant
7 affidavits, as well as thank the government for providing those
8 in a -- in a timely matter (sic). We have reviewed those, and
9 based -- based on that review, my position is unchanged, at
10 least with respect to the weight of the evidence.

11 These warrants were obtained. I tracked the nature
12 of the investigation, and essentially seek, as search warrants
13 do, permission to seize and investigate certain items,
14 including e-mail addresses, phones, cars and premises. The
15 weight of the evidence here would be the fruits of those that
16 were provided, and I don't believe that that's exactly what is
17 detailed in those search warrant affidavits. Again, it's
18 showing where the investigation is headed.

19 I think the information yet is still limited and
20 would ask the Court to rely on the weight of evidence based on
21 the probable cause affidavit in this case to charge
22 Mr. Derosier via the Complaint and the three charges that are
23 listed in there.

24 And also note too that the weight of -- the
25 government's argument is relying heavily on, if not exclusively

1 on the weight of the evidence here. The evidence here is an
2 ongoing investigation, Your Honor. I'm not going to litigate
3 every fact or allegation. I still can't do that, and I still
4 don't think that's necessary for a detention hearing. Several
5 Courts have found that the weight of the evidence as a factor
6 is the least important of which. Too heavily relying on that
7 factor overshadows the presumption of innocence.

8 And I think all the other factors indicate here,
9 despite serious allegations, that there are alternatives to
10 incarceration. Again, that is the release plan that we have
11 set forward at the first hearing, that he has a condominium
12 nearby the courthouse, nearby pretrial services office.

13 The government tried to raise some information that
14 that may not be an option for him going forward. We would
15 dispute that. That was based on the landlord relationship with
16 Mr. Derosier and Mr. Derosier's significant other.

17 They mentioned that they've fallen behind on
18 payments. My understanding is those payments are up to date,
19 that there may've been a prior working relationship there, but
20 that the contract is still good. There's no intention to try
21 to evict or initiate some legal proceedings to void the
22 contract for deed, that that remains a housing option for him.
23 That's a housing option.

24 Again, the proximity - I think it's significant - to
25 pretrial services office, where we -- he would live with his

1 significant other, who has told pretrial services that he would
2 serve as a third-party custodian, understanding what those
3 obligations would be.

4 Not only that, I had offered as a condition that
5 Mr. Derosier be placed on home confinement conditions. That
6 would prohibit him from leaving his home unless he had
7 permission under limited circumstances by a pretrial services
8 officer. And that would be monitored through geographic
9 technology, location monitoring where pretrial services would
10 know exactly where he's at.

11 The question of employment is one that's often --
12 often relevant. If someone is out and working, that that is a
13 factor that is in their favor. Certainly in this day and age
14 and with Mr. Derosier's education and -- and work history, he'd
15 be able to find employment. At this moment in time he was
16 between formal jobs. But in this case, if there's concerns
17 about his whereabouts, not working at the present time I think
18 is something that is in his favor.

19 He'd be able to maintain the premises. Mr. Berg,
20 Riley Berg, the third-party custodian, is able to work and --
21 and pay for living expenses, and that would keep Mr. Derosier
22 at home at more hours during the day. There wouldn't be any
23 concerns about to and from work and -- and the whereabouts. He
24 would be home more often, so I think that -- that employment is
25 a -- is a neutral factor. It kind of cuts both ways. If the

1 Court is concerned about employment, Mr. Derosier can be
2 gainfully employed.

3 One thing too of note -- I'm not sure if I mentioned
4 it at first, but Mr. Derosier is undergoing a construction case
5 that's out of Grand Forks. That is a case that's not related
6 to this. That has not been dismissed. And there's also a
7 civil case with regard to the business.

8 Now, in the construction criminal case he has
9 appointed counsel. He's entitled to that. In the civil case
10 he is not. He's essentially defending that case on his own,
11 which is next to impossible when he's incarcerated, and I think
12 that is a factor that's relevant as well.

13 More relevant is that this was a state case. This
14 was a state case that was dismissed on December 30th. He was
15 out on bond during that case. He was required to follow
16 conditions and be where he needed to be, and he did so. There
17 was not a revocation of that bond. So when he had an
18 opportunity to run from that case, he didn't, and he would not
19 run from this case.

20 Again, when I address the failure to appears -- and
21 the failure to appears are not a situation where he was
22 absconding from law enforcement or avoiding cases. They were
23 miscommunications, which is unfortunate. And not
24 insignificant -- not irrelevant, but I think insignificant in
25 the grand scheme of things is, though, he would check in with

1 court and get those matters taken care of.

2 And again, in this federal case those obligations to
3 check into court for hearings that is notified by mail is not
4 going to be an option. He would have direct communications
5 with a pretrial services officer and, again, have location
6 monitoring, and he would be accountable that way, Your Honor.

7 So I think that the proposed conditions here address
8 all of the concerns raised by the government, raised by the
9 pretrial services office, that those risks are mitigated by
10 home confinement at his own residence that's nearby the
11 courthouse and the pretrial services office, especially
12 considering his -- the way he had stuck around for his state
13 case, again, something that he had denied, something that he is
14 going to defend, and something he's going to do here. He has
15 no interest in running from this case, demonstrated by his
16 behavior during the state case, and again, that -- that
17 mitigates against any -- any risk of nonappearance.

18 So, Your Honor, I'm asking again that Mr. Derosier be
19 released on pretrial release pending trial in this case.

20 THE COURT: Thank you. Ms. Puhl.

21 MS. PUHL: Your Honor, the defendant ignores the --
22 I'm sorry. Closer?

23 THE COURT: Closer, yes.

24 MS. PUHL: Your Honor, the defendant has said nothing
25 about the presumption of detention in this case, which he has

1 not because he cannot overcome. He is a hands-on offender of
2 children, children who have been identified by Special Agent
3 Smith, and some of whom have been interviewed and confirm that
4 they did, in fact, engage in sexual activity, some intercourse,
5 some oral sex with this defendant or with the defendant and
6 James McHaney; Mr. McHaney, if you recall, who is in BOP
7 custody as -- today.

8 Now, I proffered all of this on Tuesday, and I
9 realize the defendant didn't have the discovery, but it's no
10 matter because the Bail Reform Act is very, very clear that the
11 parties, including the defendant, can proceed by proffer even
12 in the face when they haven't had the discovery yet, Your
13 Honor. Now, it's up to Her Honor to determine how much weight
14 to give, but it's very clear that the parties can proceed by
15 proffer, and it's designed to do that at this -- at this stage.

16 Now, our case is not limited to the weight of the
17 evidence, our recommendation or -- but, rather, it's based on
18 the nature and circumstances of the offense charged, perhaps
19 most significantly, the history and characteristics of this
20 person, his mental condition, his family ties, his lack of
21 employment, and I'll talk about that in a moment.

22 But again, that -- the weight of the evidence is
23 something that the United States did, in fact, rely on, but
24 that's limited to the Complaint. That's the child pornography.
25 What's charged here is the child pornography charges and his

1 traveling in interstate commerce with the intent to engage in
2 sexual activity with these two children, so that's very strong.

3 But I mention all this other stuff, the fact that
4 he's a hands-on offender, not a charged offense; the fact that
5 he's communicating with numerous individuals who share a sexual
6 interest in prepubescent-aged children. These are individuals,
7 Your Honor, that the defendant has shared images of his nephew
8 with. These are individuals he's expressed a sexual interest
9 in children with, in particular his nephews, his prepubescent-
10 aged nephews.

11 Some of those conversations, again, are set forth in
12 the Complaint affidavit, and they are earlier in time because,
13 as I said, they predate the travel when he went and picked up
14 his nephews in the metro area in Minnesota and brought them to
15 North Dakota. But as I proffered, there are other
16 conversations where he represents that he's sexually interested
17 in his nephews and -- and/or engaging in sexual activity with
18 them.

19 After that travel takes place, he takes sexually
20 suggestive images of the older nephew. The nephew now is 11.
21 I think at the time he would've been nine or ten.

22 In addition, the defendant possessed thousands of
23 files of child pornography, video files, image files that
24 depict the graphic sexual abuse of prepubescent-aged boys.
25 Now, I would submit that this information is sufficient in and

1 of itself to conclude that the defendant poses a serious risk
2 of danger to the community, but, nonetheless, we have -- or but
3 in addition we have all this other stuff that, again, I either
4 proffered or am relying on the affidavits.

5 So in the end, I mean, we're not just looking at the
6 weight of the evidence, we're looking at the nature and
7 circumstances of the offense conduct and the defendant's
8 character and his history, including his criminal history,
9 including allegations that he was running sham businesses,
10 accepting payment for services and never performing those
11 services, not paying his employees.

12 In addition to all that, there are these concerns
13 about the proposed residence. As I said, as I proffered, that
14 the owner of the condo told HSI on Tuesday morning, after I
15 received and read the P -- the presentence investigation
16 report (sic), that there was a contract for deed. The
17 defendant has made one payment on it, one payment, that's it,
18 and that he is -- he is taking steps to get the property back.

19 Now, the defendant says otherwise, but he hasn't
20 offered any foundation for that, so I assume it's his
21 statement, the statement of an individual who's -- who's a sham
22 artist, Your Honor. The owner says this.

23 In addition, we have the condo -- the association --
24 or the president of the condo association that says he hasn't
25 paid his condo dues, his special assessments. All that would

1 confirm what Mr. Biel has said about the -- about his failure
2 to pay -- to make any payments on the condo, so it looks like
3 this defendant is not going to have a place to return to.

4 And he has no job, and that's -- that's problematic
5 for somebody who is such a prolific collector and trader of
6 child pornography. He's at -- these are all things he can do
7 at home, so at home with no job is concerning. It's perilous.
8 And he's living with a young man who he's offered up to other
9 men, Your Honor, and again, I proffered that as well.

10 And, finally, there are the defendant -- there are
11 these warrants that have been issued for his failure to appear.
12 I know he has explanations for them, but in the end they are
13 warrants for him. He did fail to appear.

14 So collectively the defendant is not a good candidate
15 for release even aside from the presumption of detention, but,
16 of course, we have that presumption of detention that he has
17 not overcome. He has not overcome the fact that he's a
18 hands-on offender, that he's communicating with people that
19 have a like interest in prepubescent-aged boys, that he's
20 sharing images of his nephews with these individuals, and in
21 return receiving child pornography, that he's taken images --
22 sexually suggestive images of these boys.

23 So in the end, Your Honor, the defendant's suggestion
24 for release is -- as I said, it's reckless and perilous.

25 THE COURT: Thank you. Mr. Bellmore.

1 MR. BELLMORE: Your Honor, I'm just going to object
2 to the government's characterization of the rebuttable
3 presumption. The government indicated we had failed to rebut
4 the government's allegations and arguments. The presumption is
5 that there are no conditions available. That is a presumption
6 that is overcome by us bearing the burden of production. I
7 have produced a release plan that overcomes them, that is
8 enough to overcome the rebuttable presumption, and then that
9 puts the burden of persuasion ultimately on the government.

10 THE COURT: Thank you. Anything else that either
11 counsel wants to put on the record?

12 MS. PUHL: Nothing further, Your Honor. Thank you.

13 MR. BELLMORE: No, Your Honor.

14 THE COURT: All right. Mr. Derosier, I'm going to
15 grant the motion for detention, so you will stay in custody at
16 this time. There is a presumption because of the nature of the
17 charge against you. There is a presumption for detention. As
18 Mr. Bellmore just pointed out, there has been some rebuttal of
19 that presumption by presenting a release plan, but I still
20 consider the presumption even though that release plan has been
21 presented.

22 There is, of course, some question about the
23 availability of the condo as a residence. That's something I
24 consider. I consider the information that the United States
25 has proffered as to the circumstances surrounding the offense.

1 I have considered the information in the affidavits supporting
2 the Complaint and the information in the affidavits supporting
3 the applications for search warrants.

4 I have considered the criminal history information
5 that is a part of the pretrial services report, including the
6 nature of the charges pending against you concerning the
7 construction business, because there is a serious allegation of
8 deception in connection with that.

9 So in summary, having considered all of the factors
10 set out in 18 USC 3142(g), I find that the government has met
11 the burden to prove that there is no condition or combination
12 of conditions that would reasonably assure community safety and
13 reasonably assure appearance at future proceedings. There will
14 be a written order to that effect issued shortly.

15 Ms. Puhl, was there anything else needing attention?

16 MS. PUHL: Nothing further, Your Honor.

17 THE COURT: Mr. Bellmore?

18 MR. BELLMORE: Nothing further, Your Honor.

19 THE COURT: And I'll just ask for confirmation.

20 There's been a waiver of the preliminary hearing, is that
21 correct? The clerk is telling me yes.

22 MR. BELLMORE: Yes, Your Honor.

23 THE COURT: Okay. Thank you, all. We're adjourned.

24 (Proceedings concluded at 3:48 p.m., the same day.)

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